

SECTION VIII

DISCLOSURE AND USE OF PROJECT INFORMATION

8.1 General

8.1.1 The Participants recognize that successful collaboration depends on full and prompt exchange of information necessary to carry out each PA and the use of its results. The nature and amount of Project Information to be acquired will be in accordance with Section II (Objective), Section VI (Contractual Arrangements) and the PAs to this MOU. Subject to the intellectual property rights the Participants are accorded under this MOU, title to Project Foreground Information generated by a Participant or its contractor will reside in that Participant and/or its contractors, in accordance with that Participant's national laws, regulations and policies.

8.2 Project Foreground Information

8.2.1 Disclosure: Project Foreground Information will be made available to each Participant without charge.

8.2.2 Use: Each Participant may use or have used Project Foreground Information without charge only for its Defense Purposes; use for any other purpose will be subject to the prior written consent of the other Participants. The sale or other transfer of Project Foreground Information is subject to the provisions of Section XII (Third Party Sales and Transfers and Alternative Uses) of this MOU. The Participants will acquire the legal rights to use Project Foreground Information generated by Contractors in any Third Party sale or transfer.

8.3 Project Background Information

8.3.1 Disclosure: Each Participant, upon request, will disclose to the other Participants for the purposes of a PA, any relevant Project Background Information provided that:

8.3.1.1 Such Project Background Information is necessary to or useful in the PA. The Participant in possession of the information will determine whether it is "necessary to" or "useful in" the PA.

8.3.1.2 Such Project Background Information may be made available without incurring liability to holders of proprietary rights.

8.3.1.3 Disclosure is consistent with national disclosure policies and regulations of the furnishing Participant.

8.3.2 Use: A Participant may use or have used, without charge, Project Background Information disclosed by the other Participants only for the purposes of a PA. Where the use of Project Background Information is necessary to enable the use of Project Foreground Information, such Project Background Information may be used for Defense Purposes, unless the provisions of the relevant PA limit such use of the Project Background Information. Any use of Project Background Information other than as provided for in this paragraph will be subject to the prior written consent of the furnishing Participant.

8.4 Project Information subject to proprietary rights:

8.4.1 All unclassified Project Information subject to proprietary rights will be identified, marked and handled as Controlled Unclassified Information. All classified Project Information subject to proprietary rights will be so identified and marked.

8.4.2 The provisions of the NATO Agreement on the Communication of Technical Information for Defence Purposes of 19 October 1970, and its Implementing Procedures of 1 January 1971, will apply to this MOU.

8.5 Patents:

8.5.1 Each Participant will include in its Contracts a provision governing the disposition of rights in regard to Project Inventions and patent rights relating thereto, which either;

8.5.1.1 Provides that the Participant will hold title to all Project Inventions together with the right to make patent application for the same, free of encumbrance from the Contractor; or

8.5.1.1.1 Provides that the Contractor will hold title (or may elect to retain title) for Project Inventions together with the right to make patent applications for the same, while securing for the Participant a license for the Project Inventions, and any patents therefore, on terms in compliance with the provisions of paragraph 8.5.1.2 below.

8.5.1.2 In the event that a Contractor holds title (or elects to retain title) for a Project Invention, the Contracting Participant will secure for the Participants non-exclusive, irrevocable, royalty-free licenses under all patents secured for that invention, to practice or have practiced the patented Project Invention for Defense Purposes throughout the world.

8.5.1.3 The provisions of sub-paragraphs 8.5.1.4 through 8.5.1.7 below will apply in regard to patent rights for all Project Inventions made by any Participants' military or civilian employees, including those within Government-owned facilities, and for all Project Inventions made by

Contractors for which the Contracting Participant holds title or is entitled to acquire title.

8.5.1.4 Where a Participant has or can secure the right to file a patent application with regard to a Project Invention, that Participant will consult the other Participants regarding the filing of such patent application. The Participant having such rights will in other countries, file, cause to be filed, or provide the other Participants with the opportunity to file on behalf of the Participant holding such rights, or its contractors, as appropriate, patent applications covering any such Project Invention. If a Participant having filed or caused to be filed a patent application decides to stop prosecution of the application, that Participant will notify the other Participants of that decision and permit the other Participants to continue the prosecution.

8.5.1.5 Each Participant will be furnished with copies of patent applications filed and patents granted with regard to Project Inventions.

8.5.1.6 Each Participant will grant to the other Participants a non-exclusive, irrevocable, royalty-free license under its patents for Project Inventions, to practice or have practiced the patent Project Invention for Defence Purposes throughout the world.

8.5.1.7 Patent applications which contain Classified Information, to be filed under this TTRDP MOU, will be protected and safeguarded in accordance with the requirements contained in the NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defence and for which Applications for Patents Have Been Made, signed on 21 September 1960, and its Implementing Procedures.

SECTION IX

CONTROLLED UNCLASSIFIED INFORMATION

9.1 Except as otherwise provided in this MOU or authorized in writing by the originating Participant, Controlled Unclassified Information provided or generated pursuant to this MOU will be controlled as follows:

9.1.1 Such information will be used only for the purposes authorized for use of Project Information as specified in Section VIII (Disclosure and Use of Project Information).

9.1.2 Access to such information will be limited to personnel whose access is necessary for the permitted use under subparagraph 9.1.1 above, and will be subject to the provisions of Section XII (Third Party Sales and Transfers and Alternative Uses).

9.1.3 Each Participant will take all lawful steps, which may include national classification, available to it to keep such information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 9.1.2. above, unless the originating Participant consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provision, immediate notification will be given to the originating Participant.

9.2 To assist in providing the appropriate controls, the originating Participant will ensure that Controlled Unclassified Information is appropriately marked. The POs will decide, in advance and in writing, on markings to be placed on the Controlled Unclassified Information. The originating Participant will mark Controlled Unclassified Information provided to the other Participants with a legend indicating the country of origin, the conditions of release and the fact that it relates to this MOU and that it is supplied "in confidence" or the equivalent marking.

9.3 Controlled Unclassified Information provided or generated pursuant to this MOU will be handled in a manner that ensures control as provided for in paragraph 9.1.

9.4 Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Participants will ensure the Contractors are legally bound to control such information in accordance with the provisions of this Section.

SECTION X

VISITS TO ESTABLISHMENTS

10.1 Each Participant will permit visits to its Government establishments, agencies and laboratories, and Contractor industrial facilities by employees of the other Participants or by employees of the other Participants' Contractor(s), provided that the visit is authorized by the respective Participant and the employees have appropriate security clearances and a need-to-know.

10.2 All visiting personnel will be required to comply with security regulations of the host Participant. Any information disclosed or made available to visitors will be treated as if supplied to the Participant sponsoring the visiting personnel, and will be subject to the provisions of this MOU.

10.3 Requests for visits by personnel of one Participant to a facility of the other Participant will be coordinated through official channels, and will conform with the established visit procedures of the host country. Requests for visits will cite this MOU and the appropriate PA as the basis for the request.

10.4 Lists of personnel of the Participants required to visit, on a continuing basis, facilities of the other Participants will be submitted through official channels in accordance with agreed recurring international visit procedures.

SECTION XI

SECURITY

11.1 All Classified Information or material provided or generated pursuant to this MOU and its PAs will be stored, handled, transmitted, and safeguarded in accordance with the Participants' national security laws and regulations to the extent that they provide a degree of protection no less stringent than that provided for NATO classified information as detailed in the document CM(55) 15 (Final), "Security Within the North Atlantic Treaty Organization," dated 10 October 1990 and subsequent amendments.

11.2 Classified Information and material will be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities (DSAs) of the Participants. Such Classified Information and material will bear the level of classification, denote the country of origin, the conditions of release, and the fact that the information relates to this MOU and the applicable PA.

11.3 Each Participant will take all lawful steps available to it to ensure that Classified Information provided or generated pursuant to this MOU and any of its PAs is protected from further disclosure, except as permitted by paragraph 11.8 below, unless the respective Participant consents to such disclosure. Accordingly, each Participant will ensure that:

11.3.1 The recipient will not release the Classified Information to any government, national, organization, or other entity of a Third Party without the prior written consent of the respective Participant in accordance with the procedures detailed in Section XII (Third Party Sales and Transfers and Alternative Uses);

11.3.2 The recipient will not use the Classified Information for other than the purposes provided for in this MOU; and

11.3.3 The recipient will comply with any distribution and access restrictions on information that is provided under the MOU.

11.3.4 The Participants will investigate all cases in which it is known or where there are grounds for suspecting that Classified Information or material provided or generated pursuant to this MOU and any of its PAs has been lost or disclosed to unauthorized persons. Each Participant also will promptly and fully inform the other Participants of the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.

11.4 When a PA contains provisions for the exchange of Classified Information, the POs will prepare a Project Security Instruction and a Classification Guide for each PA involving the transfer of Classified Information or material. The Project Security Instruction and the Classification Guide will describe the methods by which Project Information and material will be classified, marked, used, transmitted, and safeguarded.

The appropriate Instruction and Guide will be developed by the POs within three months after the PA enters into effect. They will be reviewed and forwarded to the appropriate DSAs and will be applicable to all government and Contractor personnel participating in the Project. Each Classification Guide will be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The Project Security Instruction and the Classification Guide will be approved by the appropriate DSAs prior to the transfer of any Classified or Controlled Unclassified Information.

11.5 The DSA of the country in which a classified contract is awarded pursuant to this MOU will assume responsibility for administering within its territory security measures for the protection of the Classified Information, in accordance with its laws and regulations. Prior to the release to a Contractor, prospective Contractor, or subcontractor of any Classified Information received under this MOU, the DSAs will:

11.5.1 Ensure that such Contractor, prospective Contractor, or subcontractors and their facilities have the capability to protect the Classified Information adequately.

11.5.2 Grant a security clearance to the facilities, if appropriate.

11.5.3 Grant a security clearance for all personnel whose duties require access to Classified Information, if appropriate.

11.5.4 Ensure that all persons having access to the Classified Information are informed of their responsibilities to protect the Classified Information in accordance with national security laws and regulations, and the provisions of this MOU.

11.5.5 Carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected.

11.5.6 Ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of the MOU.

11.6 Contractors, prospective Contractors, or subcontractors which are determined by DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this MOU and any of its PAs only when enforceable measures are in effect to ensure that nationals or other entities of a Third Party will not have access to Classified Information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the respective Participant will be consulted for approval prior to permitting such access.

11.7 For any facility wherein Classified Information or material is to be used, the responsible Participant or Contractor will approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the information or material pertaining to this MOU and any of its PAs. These officials will be responsible for limiting access to Classified Information or material involved in this MOU and any of its PAs to those persons who have been properly approved for access and have a need-to-know.

11.8 Each Participant will ensure that access to the Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the information in order to participate in this MOU and any of its PAs.

11.9 Information or material provided or generated pursuant to this MOU and any of its PAs may be classified as high as SECRET, unless a PA specifically authorizes a higher classification. The existence of this MOU is Unclassified and the contents are Unclassified. The classification of a specific PA and its content will be stated in the PA.

SECTION XII

THIRD PARTY SALES AND TRANSFERS AND ALTERNATIVE USES

12.1 Each Participant will retain the right to sell, transfer title to, disclose, or transfer possession of Project Foreground Information only if:

12.1.1 it is generated solely by either that Participant or that Participant's Contractors in the performance of that Participant's work allocation under a PA or Section III (Scope of Work); and

12.1.2 it does not include any Program Foreground Information or Program Background Information of the other Participants and whose generation, test or evaluation has not relied on the use of Program Equipment of the other Participants.

12.2 In the event questions arise whether the Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) that a Participant intends to sell, transfer title to, disclose, or transfer possession of to a Third Party is within the scope of 12.1.1. above, the matter will be brought to the immediate attention of the other Participants' POs. The Participants will resolve the matter prior to any sale or other transfer of such Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) to a Third Party.

12.3 Except to the extent permitted in paragraph 12.1 above, the Participant(s) will not sell, transfer title to, disclose, or transfer possession of Project Foreground Information to any Third Party without the prior written consent of the other Participant(s). Furthermore, a Participant will not permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written consent of the other respective Participant(s). Such consent will not be given unless the government of the intended recipient agrees in writing with the other Participants that it will;

12.3.1 not retransfer, or permit the further retransfer of, any equipment or information provided; and

12.3.2 use, or permit the use of, the equipment or information provided only for the purposes specified by the other Participants.

12.4 A Participant will not sell, transfer title to, disclose, or transfer possession of Project Equipment or Project Background Information provided by another Participant to any Third Party without the prior written consent of the Participant which provided such equipment or information. The providing Participant will be solely responsible for authorizing such transfers and, as applicable, specifying the method and conditions for implementing such transfers.

12.5 Consent for Third Party sales and transfers of Project Foreground Information will not be withheld except for reasons of foreign policy, national security, or national laws. No Participant will refuse approval of a sale or transfer to a Third Party when it would be willing to sell or transfer such information to the same Third Party.

SECTION XIII

LIABILITY AND CLAIMS

13.1 Claims against any Participant or their personnel will be dealt with in accordance with the terms of Article VIII of the NATO Status of Forces Agreement (NATO SOFA), dated 19 June 1951. Civilian employees of the Participants assigned to duty within their government's Defense Department or Ministry will be deemed for the purpose of Article VIII of the NATO SOFA to be members of a civilian component within the meaning of Article I of the NATO SOFA while present in the territory of another Participant for the purposes of this MOU and its PAs. However, claims for loss or damage to Project Equipment loaned under Section VII (Project Equipment) and PAs will be dealt with in accordance with Section VII, paragraph 7.2.

13.2 Claims arising under or related to any contract awarded pursuant to Article VI (Contractual Arrangements) will be resolved in accordance with the provisions of the contract.

13.3 Employees and agents of Contractors will not be considered to be civilian personnel employed by a Participant for the purpose of paragraph 13.1.

13.4 In case of damage to or by jointly acquired Project Equipment under a PA, where the cost of making good such damage is not recoverable from other persons, such cost will be borne by the Participants according to the cost sharing arrangements in that PA.

SECTION XIV

CUSTOMS DUTIES, TAXES AND SIMILAR CHARGES

14.1 Customs duties, import and export taxes and similar charges will be administered in accordance with each Participant's respective laws and regulations. Insofar as existing national laws and regulations permit, the Participants will endeavor to ensure that such readily identifiable duties, taxes and similar charges, as well as quantitative or other restrictions on imports and exports, are not imposed in connection with work carried out under each PA.

14.2 Each Participant will use its best efforts to ensure that customs duties, import and export taxes, and similar charges are waived or otherwise administered in a manner favorable to the efficient and economical conduct of the work. If any such duties, taxes, or similar charges are levied, the Participant in whose country they are levied will bear such costs.

SECTION XV

SETTLEMENT OF DISPUTES

15.1 All activities of the Participants under this MOU and its PAs will be carried out in accordance with their national laws. Disputes arising under or relating to this MOU or its PAs will be resolved only by consultation between the Participants and will not be referred to an individual, any national or international tribunal, or to any other forum for settlement.

15.2 In the event of a conflict between the provisions of this MOU and any PA, this MOU will take precedence.